Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLER

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-250

CITY OF CHARLOTTE, et al.,

Petitioners,

—v.—

LOCAL 660, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR CERTIORARI FILED AUGUST 16, 1975
CERTIORARI GRANTED OCTOBER 14, 1975

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Local 660, International Association of Firefighters, an unincorporated labor organization, and R. L. Middleton, W. M. Brawley, D. F. Black, M. L. Knight, and R. D. McCall, as officers of Local 660 and individually,

Plaintiffs,

—vs—

City of Charlotte, a municipal corporation, the Charlotte City Council, the governing legislative body of the City of Charlotte, and Fred Alexander, James Whittington, Milton Short, Ruth Easterling, Joe Withrow, Sandy Jordan, and James McDuffie, as members of the Charlotte City Council and individually,

Defendants.

Federal Question — Civil Rights Title 42, Sec. 1983 —plaintiffs seek declaratory judgment against discriminatory practice of defendants allegedly refusing to withhold union dues from their pay checks.

Dated	No.	Proceedings	No. C-C-73-236
10-2-73	#1	Complaint	
10-23-74	#3	Answer and Motion to Dismiss, or in the Alternative, a Summary Judgment	
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Dated	No.	Proceedings	No. C-C-73-236
2-1-74		Hearing—pre-trial and motions	
2-5-74	#9	Memorandum (J. B. McMillan)—motions to dismiss denied; pltfs requested to supply evidence as to number of firemen in the Dept. and number that belong to union; defts requested to supply evidence indicating which of the 16 items checked off are authorized by state law. Clerk to set matter for further hearing.	
2-4-74		Documentation of authorities for various salary deductions requested by Judge McMillan in Item 9 with Exhibits 1-5	
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7-3-74	#12	Plaintiffs' Motion to Amend Complaint	
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7-25-74	#15	Affidavit of R. L. Middleton	
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IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

COMPLAINT

(Filed October 2, 1973)

I

(a) Jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1331 and 1343, this being a suit in equity authorized by law, Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a State of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the First and Ninth Amendments and by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

(b) Jurisdiction is further invoked under Title 28, United States Code, Sections 2201 and 2202, this being a suit for a declaratory judgment, declaring the unconstitutionality of the pattern and practice of the defendants in refusing to withhold or "check-off" union dues on behalf of Local 660, International Association of Fire Fighters.

II

(a) Plaintiff, Local 660, International Association of Fire Fighters (hereinafter "Local 660"), is an unincorporated labor organization whose goals include providing assistance to individual fire fighters, fire departments and local communities to upgrade firefighting practices and techniques. The membership of Local 660 is composed of numerous dues-paying fire fighters employed by the defendant City of Charlotte.

(b) Plaintiffs R. L. Middleton, W. M. Brawley, D. F. Black, M. L. Knight and R. D. McCall are fire fighters employed by the defendant City of Charlotte. Middleton, Brawley, Black, Knight and McCall are members and officers of Local 660 and are dedicated to providing first-class fire protection to the residents of Charlotte, Mecklenburg County, North Carolina.

III

(a) The defendant City of Charlotte is a municipal corporation of the State of North Carolina, charged by the State Constitution, laws and ordinances with the general supervision of the Fire Department of the City of Charlotte, North Carolina, including the establishment of wages and salaries, rates of pay, hours of employment and the various rules and regulations of the Charlotte Fire Department.

(b) The defendant Charlotte City Council is the governing body charged by the North Carolina State Constitution, laws and ordinances with establishing rules, regulations and policies for the day-to-day operation of the various departments and agencies, including the Charlotte Fire Department, of the City of Charlotte.

(c) The defendants Fred Alexander, James Whittington, Milton Short, Ruth Easterling, Joe Withrow, Sandy Jordan,

and James McDuffie are citizens of Charlotte, North Carolina, and are duly elected or appointed members of the Charlotte City Council. Said council members are sworn to enforce the constitutions and laws of the United States and the State of North Carolina and are responsible for establishing and administering the rules, regulations and policies of various Charlotte departments and agencies, including the Charlotte Fire Department.

IV

The defendants have engaged in a pattern and practice of refusing to withhold or check-off union dues from members of Local 660 who are employees of the City of Charlotte and the Charlotte Fire Department. Local 660, through its duly elected officers, has made numerous requests to the defendants and their agents to have the defendants check-off dues from those members of Local 660 who approve such check-off for the benefit of Local 660. All such requests, including request made in September, 1973, have been denied.

The defendants have approved the withholding or check-off from fire department employee wages or monies for such matters as various insurance payments and charitable contributions, among others, but have arbitrarily refused to allow Local 660 and its cooperating union members to check-off labor organization dues. This arbitrary and capricious practice of the defendants violates, among other things, the plaintiffs' rights under the First Amendment to the United States Constitution to freedom of speech, freedom of assembly, including rights of the plaintiffs to organize, petition and to bargain for rights and privileges of employment. Said arbitrary practice also violates plaintiffs' rights guaranteed by the Due Process and Equal Protection clauses of the Fourteenth Amendment.

V

WHEREFORE, plaintiffs respectfully pray that upon the filing of this Complaint, the Court, as may appear proper and convenient:

(a) Declare that the practice of the defendants of selectively withholding or checking-off monies of Fire Department employees is unconstitutional;

(b) Issue a mandatory injunction requiring the defendants to withhold or check-off the labor organization dues of all members of Local 660 who so request in the same manner that contributions or assessments for other organizations or purposes are withheld;

(c) Grant plaintiffs their costs herein including reasonable attorney fees and expenses; and

(d) Grant such other, further or alternative relief as to the Court may appear equitable and just.

Respectfully submitted,

s/Jonathan Wallas

JONATHAN WALLAS

J. LEVONNE CHAMBERS

Chambers, Stein, Ferguson & Lanning
Suite 710, East Independence Plaza
951 South Independence Boulevard
Charlotte, North Carolina 28202

Attorneys for Plaintiffs

This the 2 day of October, 1973

(Certificate of service omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

ANSWER AND MOTION TO DISMISS, OR IN THE ALTERNATIVE, A SUMMARY JUDGMENT

(Filed October 23, 1973)

W. A. WATTS, ATTORNEY FOR DEFENDANTS, ANSWERING THE COMPLAINT OF THE PLAINTIFFS AND REQUESTING THIS VERIFIED ANSWER BE USED AS AN AFFIDAVIT IN SUPPORT OF THE MOTIONS CONTAINED HEREIN AND AS NOTICE OF SAID MOTIONS, FOR THEIR MOTIONS AND ANSWERS, ALLEGES AND MOVES THE COURT AS FOLLOWS:

FIRST DEFENSE

The defendants, pursuant to Rule 12(b)(2) and (6) of the Federal Rules of Civil Procedure, move the Court that this action be dismissed because the complaint fails to state a claim against them upon which relief can be granted and, in support of this motion, the defendants assign the following reasons:

1. Title 42, United States Code, Section 1343, does not grant this Court jurisdiction to act against a municipal defendant, such defendant not being a "person" within the purview of that statute. Further, defendants deny that Sec-

tion 1983 grants the Court jurisdiction against any of the other named defendants because the matters and facts set forth in the complaint do not allege a violation of any "civil right" within the meaning of that statute. Rather, the facts alleged show that plaintiffs merely complain that the City has refused to withhold from employees' pay certain union dues, and the City has refused to pay these union dues so withheld over to plaintiff union. In other words, defendants have, according to the complaint, in their discretion refused to establish and utilize any "check-off" system. This refusal is certainly not a violation of any civil rights of any of the plaintiffs but rather it is the exercise of sound discretion inherent in a municipality and its governing body. Further, neither the First, Ninth and Fourteenth Amendments to the Constitution of the United States, nor any other constitutional provisions, set forth any right in any person to require a municipality to utilize its accounting and financial facilities in establishing and maintaining such a check-off system in favor of any labor union.

SECOND DEFENSE

The defendants, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, move the Court for a summary judgment. Plaintiffs have prayed for injunctive relief of an affirmative nature as well as for a declaratory judgment, and they have failed to allege a failure on the part of the defendants to perform a clear legal duty so as to provide grounds for equitable relief and a valid basis for a decree in equity. Consequently, plaintiffs request for injunctive relief and for a declaratory judgment should be dismissed.

ANSWER

The specific allegations of plaintiffs' complaint are answered hereunder:

I

(a) Answering the allegations of subparagraph (a), defendants deny that this Court has jurisdiction pursuant to Title 28, United States Code, Sections 1331 and 1343, or under Title 42, United States Code, Section 1983.

(b) Answering the allegations of subparagraph (b), defendants deny that this Court has jurisdiction pursuant to Title 28, United States Code, Sections 2201 and 2202.

II

(a) Answering the allegations of subparagraph (a), defendants admit on information and belief that plaintiff, Local 660, International Association of Firefighters, is an unincorporated labor organization. The remaining allegations are denied, defendants lacking sufficient information to form a belief.

(b) The allegations of subparagraph (b) are denied, defendants lacking sufficient information to form a belief.

III

(a) The allegations of subparagraph (a) are admitted.

(b) The allegations of subparagraph (b) are admitted.

(c) The allegations of subparagraph (c) are admitted.

IV

Answering the allegations of paragraph IV, it is admitted that defendants have declined to withhold or check-off union dues for members of Local 660 or any other labor organization. It is admitted that some members of Local 660, from time to time, have requested that some kind of dues check-off be permitted and these requests have been denied.

It is admitted that defendants have approved the withholding of pay from certain employees, including fire department employees, for certain insurance programs and for other specific purposes, but in their discretion the defendants have refused to withhold or institute a dues check-off system for any labor organization. It is denied the defendants' classification of various things for which deductions might be made from its employees' pay is in any way arbitrary and capricious, but is a reasonable classification of various deductions which might be made from employees' pay. It is further denied that this classification of things which may be deducted from employees' pay and things which may not be deducted from employees' pay violates any of plaintiffs' rights to freedom of speech, assembly and right to organize, and plaintiffs' right to petition and bargain in any way with their employer. It is denied that the reasonable classification by defendants in any way violates plaintiffs' guaranteed right of Due Process and Equal Protection under the law. The remaining allegations of paragraph IV are denied.

AND AS A FURTHER ANSWER AND DEFENSE AND AS A PLEA IN BAR OF THE DEMAND OF THE PLAINTIFFS, the defendants allege and say:

North Carolina General Statute 95-98 has declared illegal, contracts between units of government, such as defendant City, and labor unions, trade unions, labor organizations, and the institution of a dues check-off system would, per se, require such a contract. Further, a ruling in favor of plaintiffs would in effect declare illegal and unconstitutional N.C.G.S. 95-98. For this reason defendants do hereby request that a Three-Judge Court be convened to hear and decide this controversy, including the constitutionality of N.C.G.S. 95-98.

WHEREFORE, HAVING FULLY ANSWERED THE COMPLAINT, DEFENDANTS PRAY THE COURT TO HOLD, RULE, ADJUDGE AND DECREE AS FOLLOWS:

(a) That the Court grant the motions of the answering defendants to dismiss this action, and that the Court grant any and all other motions as set forth as defenses in this action.

(b) That a Three-Judge Court be convened to hear and decide the constitutionality of N.C.G.S. 95-98.

(c) That this verified answer be treated as a affidavit for the purposes of the motions alleged herein by these answering defendants.

(d) That the plaintiffs be taxed with the cost of this action.

(e) That the answering defendants have such other and further relief as to the Court may seem just and proper.

Office of the City Attorney

s/W. A. Watts

W. A. WATTS

Attorney for Defendants
600 East Trade Street
Charlotte, N. C. 28202
704/374-2254

(Certificate of service omitted in printing)

NORTH CAROLINA
MECKLENBURG COUNTY

DAVID A. BURKHALTER, being first duly sworn, deposes and says:

That he is an officer of the City of Charlotte, to wit, its City Manager, and as such is authorized to make this oath; that he has read the foregoing and attached Answer And Motion To Dismiss, Or In The Alternative, A Summary Judgment; that the same is true of his own knowledge and belief except as to those matters and things therein stated upon information and belief, and as to those, he believes it to be true.

s/David A. Burkhalter

DAVID A. BURKHALTER
City Manager

(Jurat omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

PLAINTIFFS' FIRST INTERROGATORIES

(Filed November 19, 1973)

TO: W. A. WATTS, ESQ.
Attorney for Defendants
600 East Trade Street
Charlotte, North Carolina 28202

Plaintiffs request, pursuant to Rule 33, Federal Rules of Civil Procedure, that the defendants answer, under oath and according to law, the following written interrogatories:

1. State the names of all organizations, programs, and purposes for which the City has withheld or checked-off monies from paychecks of Fire Department employees within the last ten (10) years.

2. State the names of all organizations, programs, and purposes which have requested that monies be withheld or checked-off from paychecks of Fire Department employees and whose requests have been refused within the last ten (10) years.

3. State the names and addresses of all City officials who have, at anytime in the last ten (10) years, been responsible for deciding whether or not a specific request to check-off or withhold monies from paychecks of Fire Department employees will be allowed.

4. State the criteria utilized to decide whether or not a specific request for withholding or check-off of monies from wages of Fire Department employees will be allowed.

5. State whether the defendants require a written contract between organizations seeking to have monies withheld or checked-off from employee paychecks and the City. If so, state the date any such contracts were executed within the last ten (10) years and the name of the party contracting with the City. Further state where such contracts are now located or attach copies of said contracts.

6. State whether or not Fire Department employees who desire that monies be checked-off or withheld from their paychecks for specific purposes must sign written authorizations requesting that such withholding be made. If so, attach copies of blank authorization forms or state where such forms are located.

7. State whether or not the City Council has, at anytime within the last ten (10) years, debated, discussed, or voted upon the proposals or requests of Local 660, members of Local 660, or Fire Department employees to have union dues withheld or checked-off by the City. If so, state when such proposals or requests were debated and voted upon and the results of said votes.

8. State the names of all witnesses who the defendants presently intend to call to testify at the trial of this action.

This the 15th day of November, 1973.

Respectfully submitted,

s/Jonathan Wallas

JONATHAN WALLAS

J. LEVONNE CHAMBERS

Chambers, Stein, Ferguson & Lanning
Suite 730 East Independence Plaza
951 South Independence Boulevard
Charlotte, North Carolina 28202

Attorneys for Plaintiffs

(Certificate of service omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

ANSWER TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

(Filed December 17, 1973)

NOW COME the defendants by and through their agent, W. A. Watts, Deputy City Attorney, answering plaintiffs' first set of Interrogatories served on the defendants on November 16, 1973 as follows:

1. (a) Federal Income Tax
   (b) State Income Tax
   (c) North Carolina Firemen Retirement
   (d) North Carolina Local Governmental Retirement System
   (e) Medical Insurance—Life of Virginia
   (f) Life Insurance—Life of Virginia
   (g) United States Savings Bonds
   (h) United Way—Mecklenburg—Union
   (i) Firemen Benefit Fund—Lincoln National Life
   (j) Charlotte Fire Department Credit Union
   (k) Aetna Deferred Compensation Program

   (l) Charlotte Fire Department Voluntary Pledge Fund
   (m) City-County Tax Levy
   (n) State Tax Levy

2. There have been no denials for check-off in the Fire Department within the last ten (10) years with the exception of the I.A.F.F. dues check-off requests.

3.

Mayor and City Council	Office of Mayor 600 East Trade Street Charlotte, N. C. 28202
City Manager	Office of City Manager 600 East Trade Street Charlotte, N. C. 28202
Personnel Director	Personnel Department 600 East Trade Street Charlotte, N. C. 28202
Finance Director	Finance Department 600 East Trade Street Charlotte, N. C. 28202
City Attorney	City Attorney's Office 600 East Trade Street Charlotte, N. C. 28202

4. Because of a potentially large number of organizations that might desire withholding service, the City has generally limited such withholdings to tax, retirement-insurance, limited investment situations and certain charitable contributions. Unrestricted withholding is impractical due to the volume of clerical and administrative work that such a process would demand.

5. Written contracts are required when the City agrees to withhold monies from an employee's paycheck except when such withholding is statutory in nature (i.e., taxes, North Carolina Local Governmental Retirement System, North Carolina Firemen's Retirement System, Firemen's Benefit Fund) or when the withholding service is requested by an employee under one of the limited available investment withholding categories such as United States Savings Bonds or the Credit Union, or for the limited available charitable withholdings such as the United Way.

Current written contracts exist with the following companies, and these contracts may be reviewed at the City's Personnel office.

Company	*Program*	*Contract Location*	*Execution Date*
(1) Aetna Life Insurance Co.	Deferred Compensation	Personnel Department 600 East Trade Street Charlotte, N. C. 28202	June 11, 1973
(2) Life of Virginia	Life & Medical Insurance	Personnel Department 600 East Trade Street Charlotte, N. C. 28202	Dec. 1, 1967

6. Yes, except when withholding service is a statutory requirement. The forms may be reviewed at the City Attorney's office, 600 East Trade Street, Charlotte, N. C. 28202.

7. Each year since 1969 during the annual budget review period, the City Council has discussed and voted down proposals of Local 660, members of Local 660, or Fire Department employees to have union dues withheld or checked-off by the City.

8. List of witnesses have not been compiled and is unknown as of this date.

This the 17th day of December, 1973.

s/W. A. Watts

W. A. WATTS
Deputy City Attorney

(Jurat and certificate of service omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed February 1, 1974)

Plaintiffs, by and through their undersigned counsel, pursuant to Rule 56, Federal Rules of Civil Procedure, show the Court as follows:

1. This action was filed on October 2, 1973, and answer was filed by defendants on October 23, 1973.

2. Discovery thus far completed in this case demonstrates that there is no genuine issue with respect to any material fact herein. Plaintiffs respectfully refer the Court to the affidavits of R. L. Middleton and D. F. Black and Plaintiffs' First Interrogatories and the defendants' answers thereto filed herein.

3. Plaintiffs are entitled to Summary Judgment as a matter of law. Plaintiffs respectfully refer the Court to Plaintiffs' Memorandum In Support of Plaintiffs' Motion for Summary Judgment filed herewith.

WHEREFORE, plaintiffs move that they be granted Summary Judgment in their favor with respect to all issues raised

in the Complaint filed herein and that they be granted the relief prayed for in the Complaint.

Respectfully submitted,

/Jonathan Wallas

JONATHAN WALLAS
J. LEVONNE CHAMBERS
Chambers, Stein, Ferguson & Lanning
Suite 730 East Independence Plaza
951 South Independence Boulevard
Charlotte, North Carolina 28202
Attorneys for Plaintiffs

This 1st day of February, 1974.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed February 1, 1974

D. F. BLACK, being duly sworn, deposes and says:

1. That he is a plaintiff in this action, a fire fighter engineer in the Charlotte Fire Department, and Secretary of Local 660, International Association of Fire Fighters.

2. That, in his individual capacity and in his capacity as a member and officer of Local 660, he has attempted from time-to-time to have the defendants herein withhold or check-off on a regular basis, monies from his paychecks as dues to be paid directly to Local 660.

3. That sometime about 1970, he and other members of the Charlotte Fire Department and Local 660 submitted more than 300 authorization cards signed by more than 300 members of the Charlotte Fire Department each individually requesting dues check-off. These cards were submitted to Mr. Robert Earle, Personnel Director of the City of Charlotte, the designated representative of the City Manager. The request to have dues withheld or checked off was denied.

4. That during each succeeding year since 1970 he, both in an individual capacity and as an officer and member of Local 660, has attempted to have the defendants check-off

dues for the benefit of himself, other department members and Local 660. His request has been denied each year.

5. That, upon information and belief, other members of the Charlotte Fire Department and Local 660 have from time-to-time made similar requests for dues check-off which have been denied.

6. That, in recent months, Local 660 has begun negotiations to obtain a group life insurance plan for its members. Local 660 and its officers have been informed by two life insurance companies, Jefferson Standard Life Insurance Company and Vulcan Life Insurance Company, that they will be unable and unwilling to offer a group life insurance plan to Local 660 and its members until said members are afforded voluntary dues check-off by the City of Charlotte.

7. That the refusal of the defendants to withhold or check off dues as set forth hereinabove severely and materially impinges on his rights and the rights of other Fire Department employees and Local 660 to associate together for the purposes of, among other things, obtaining group life insurance and joining together for other lawful common purposes.

8. That upon information and belief, he is of the opinion and belief that the reason that the defendants have refused to allow dues check-off for himself, other members of the Fire Department and Local 660 is that the City desires to discourage the formation and ...lopment of Local 660 and other municipal labor unions.

s/D. F. Black

D. F. BLACK

(Jurat omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed February 1, 1974)

R. L. MIDDLETON, being duly sworn, deposes and says:

1. That he is a plaintiff in this action, a lieutenant in the Charlotte Fire Department, and President of Local 660, International Association of Fire Fighters.

2. That, in his individual capacity and in his capacity as a member and officer of Local 660, he has attempted from time-to-time to have the defendants herein withhold or check-off, on a regular basis, monies from his paychecks as dues to be paid directly to Local 660.

3. That sometime about 1970, he and other members of the Charlotte Fire Department and Local 660 submitted more than 300 authorization cards signed by more than 300 individual members of the Charlotte Fire Department each individually requesting dues check-off. These cards were submitted to Mr. Robert Earle, Personnel Director of the City of Charlotte, the designated representative of the City Manager. The request to have dues withheld or checked off was denied.

4. That during each succeeding year since 1970 he, both in individual capacity and as an officer and member of Local 660, has attempted to have the defendants withhold or check-off dues for the benefit of himself, other department members and Local 660. His request has been denied each year.

5. That, upon information and belief, other members of the Charlotte Fire Department and Local 660 have from time-to-time made similar requests for dues check-off which have been denied.

6. That, in recent months, Local 660 has begun negotiations to obtain a group life insurance plan for its members. Local 660 and its officers have been informed by two life insurance companies, Jefferson Standard Life Innsurance Company and Vulcan Life Insurance Company, that they will be unable and unwilling to offer a group life insurance plan to Local 660 and its members until said members are afforded voluntary dues check-off by the City of Charlotte.

7. That the refusal of the defendants to withhold or check-off dues as set forth hereinabove severely and materially impinges on his rights and the rights of other Fire Department employees and Local 660 to associate together for the purposes of, among other things, obtaining group life insurance and joining together for other lawful common purposes.

8. That he has been informed by City Manager, David Burkhalter, that the costs to the City of dues check-off for individual members of the Fire Department is negligible.

9. That, in addition to those organizations and agencies for which defendants withhold monies (See Answer to Plaintiffs' First Interrogatory No. 1), defendants also have arranged to deduct the per capita tax (dues) payable by members of the North Carolina State Fireman's Association in 1974 and

have distributed payroll deduction cards for that purpose. See Exhibit A attached hereto.

10. That, upon information and belief, he is of the opinion and belief that the reason that the defendants have refused to allow dues check-off for himself, other members of the Fire Department, and Local 660 is that the City desires to discourage the formation and development of Local 660 and other municipal labor unions.

s/R. L. Middleton

R. L. MIDDLETON

(Jurat omitted in printing)

EXHIBIT A

CITY OF CHARLOTTE
INTER-OFFICE COMMUNICATION

DATE: January 22 1974

FROM: W. O. Dowdy, Chairman
Firemen's Benefit Fund

TO: All Members
Charlotte Fire Department

SUBJECT: N. C. STATE FIREMEN'S ASSOCIATION DUES FOR 1974 (PER CAPITA TAX)

The Board of Directors of the Charlotte Firemen's Benefit Fund met this date with the following members present: Chief W. O. Dowdy, Captain R. E. Honeycutt, Captain John B. B. Prophet, Captain C. A. Butler, A. B. Caudle, and J. C. Beacham, and passed the following resolution: That the Benefit Fund underwrite the 1974 dues to enable Secretary to meet deadline for payment.

When letter was sent out some time back, it was a majority vote that each man be assessed in the amount of $3.00 in lieu of having our annual barbecue. This deduction will be made on March 29, 1974, payroll, which will be the fifth pay day in the month, when no hospitalization or group insurance are deducted.

CITY OF CHARLOTTE
INTER-OFFICE COMMUNICATION

DATE: January 22, 1974

FROM: John E. Lee, Chief
Fire Department

TO: All Members
Charlotte Fire Department

SUBJECT: PER CAPITA TAX DEDUCTION CARDS - 1974

Attached you will find a payroll deduction card in the amount of $3.00 to cover your Per Capita Tax for 1974. Payroll Department requires a signature from each member before deduction is made. Signature must be made on the reverse side of the card.

Membership cards have been secured from the N. C. State Firemen's Association and will be distributed as soon as the deduction cards are returned. It will be the responsibility of each company officer to see that these cards are distributed and returned to the General Office as soon as possible.

Please do not fold or mutilate cards.

28

D. F. Black

29

MEMORANDUM

(Filed February 5, 1974)

Date: February 1, 1974

To: C-C-73-236

From: Judge McMillan

Subject: Local 660, et al. v. City of Charlotte, et al.

This case was heard on February 1, 1974, on a pretrial conference and on the motions of defendants to dismiss.

All motions to dismiss are denied; since the only relief sought is equitable I believe the City may be retained as a party defendant and the question whether a claim is stated appears to be essentially a question of law rather than of fact.

Plaintiffs, a labor union and its officers, ask that the City be required to check off the dues of the individual plaintiffs and other members of Local 660. The theory is that the City is already making deductions from paychecks for some sixteen organizations, most of them not required by statute, and that the refusal of the defendants to deduct union dues is discrimination under the theory of the "Hair" cases and other similar decisions. Defendants say that contracts with labor unions are unlawful under G.S. 95-98, and that they should not be required to check off dues, there being no right to such a check off.

Plaintiffs have been requested to supply evidence as to the number of firemen in the Department and the number of firemen who belong to the union. Defendants have been requested to supply evidence or statutory authority indicating

which of the sixteen items now being checked off are required or authorized by state law.

After this information has been filed, the Clerk is requested to put the matter down for further hearing on the motions of defendants to dismiss and on plaintiffs' motion for summary judgment.

Office of the City Attorney 600 East Trade Street

CITY OF CHARLOTTE
Charlotte, North Carolina 28202

February 4, 1974

The Honorable James B. McMillan
U. S. District Court
Post Office Building
Charlotte, North Carolina

Re: Local 660, International Assoc. of Firefighters, et al.
v. City of Charlotte, et al. C-C-73-236

Dear Sir:

At our pre-trial conference on Friday morning consideration was given to defendants' position that a summary judgment should be entered in this case because of the following reasons:

1. Employees have no right to require the City to check-off union dues.
2. North Carolina General Statute 95-98 prohibits the check-off of union dues.
3. The City has not treated plaintiffs' union differently than other labor unions in that dues are not checked off or paid to any such organization.

In defendants' answer to plaintiffs' interrogatories filed on December 17, 1973, certain programs and purposes for which salary deductions were made were listed under Interrogatory No. 1, (a) through (n). You questioned the City's legal responsibility or authority for deducting for these programs.

We submit the following information:

(c) *North Carolina Firemens Retirement.*—Chapter 926 of the 1947 Session Laws of North Carolina, as amended, Section 1, states that if 75% of the members of the Fire Department elect by vote not to come under Article 3, Section 123, there shall be established in lieu thereof the Charlotte Firemen's Retirement System. Section 5 states that each "member shall pay and the City of Charlotte shall cause to be deducted from the salary of each uniformed member of the Charlotte Firemen's Retirement System, on each and every payroll of such employee and for each and every payroll period . . .". This is attached as Exhibit No. 1. This legislation does not permit the City to refuse to deduct in this instance.

(d) *North Carolina Local Government Retirement System.*—Section 128-23 of the N. C. General Statutes provides that the employer shall deduct from the salaries of employees who become members, their contribution. See Exhibit No. 2.

(m) *City-County tax levy and (n) State tax levy.*—N. C. G. S. 105-367, 368 permits the Tax Collector to serve a notice or levy of taxes due after which it is the duty of the City or employer to withhold wages and pay them over to the Tax Collector. See Exhibit No. 3.

You have also asked for a copy of the Attorney General's opinion stating that N. C. G. S. 95-98 prohibits dues check-off. The Attorney General takes the position that the City would be required to, in some fashion, contract with the union before dues could be checked off, and that any such contract would be illegal under the above statute. It is our opinion that a ruling requiring this City to check-off union dues would in effect nullify N. C. G. S. 95-98. Under such circumstances, we believe it appropriate that the N. C. Attorney General be permitted to intervene in this case. See Exhibit No. 4.

We have also pointed out orally that the City has entered into contracts with the insurance companies and wages are withheld for medical and life insurance policy payments, and with Ætna Insurance Company where salaries are withheld for savings. In the case of withholding for the Charlotte Employees' Credit Union, salaries withheld are not paid over to some other organization, but is deposited to the account of the employee. The only situation where there is a withholding of wages for the benefit of some other organization is when the employee asks that a charitable deduction be made for the United Way.

Plaintiffs have submitted that the State Firemen's Association is a union. However, this organization has no relationship to a union. It is set up under Chapter 118-10 of the N. C. General Statutes and the funds are a part of the Firemen's Relief Fund. See Exhibit No. 5.

We respectfully urge this Court that whether or not this union has a majority of the Charlotte firemen as its members makes no difference. However, we do not believe that a majority of the 530 firemen are members. Of course, we have no way of knowing the exact number of union members and we would urge the Court that the union be required to make available signed membership cards if this is to be a factor.

We hope the above has been responsive to the questions the Court has posed.

Sincerely,

W. A. Watts

W. A. WATTS
Deputy City Attorney

WAW:dbb

EXHIBIT 1

Chapter 926 of the 1947 Session Laws of North Carolina Establishing the Charlotte Firemen's Retirement System, as Amended.

An Act Exempting the Uniformed Employees of the Fire Department of the City of Charlotte from the Provisions of Article 3, Chapter 128 of the General Statutes of North Carolina of 1943 and Acts Amendatory Thereto, and Establishing the Charlotte Firemen's Retirement System.

* * *

SECTION 5. Method of Financing. Each member shall pay and the City of Charlotte shall cause to be deducted from the salary of each uniformed member of the Charlotte Firemen's Retirement System, on each and every payroll of such employee and for each and every payroll period, eight and thirteen hundredths per centum (8.13%) of his payroll earnings in payment thereof, and the City of Charlotte shall also contribute a sum equal to eight and thirteen hundredths per centum (8.13%) of said payroll earnings.***

EXHIBIT 2

Section 128-23 of the North Carolina General Statutes

§128-23. *Acceptance by cities, towns and counties.* (a) The governing body of any incorporated city or town may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

* * *

(c) Any eligible employer desiring to participate in the Retirement System shall file with the board of trustees an application for participation under the conditions included in this article on a form approved by the board of trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this article, and to transmit such contributions to the board of trustees. ***

EXHIBIT 3

Section 105-368 of the North Carolina General Statutes

§105-368. *Procedure for attachment and garnishment.*

* * *

(h) Tax collectors may proceed against the wages, salary, or other compensation of officials and employees of this State and its agencies, instrumentalities, and political subdivisions in the manner provided in this section. *** All deductons from the wages or salary of a taxpayer made pursuant to this subsection (h) and remitted to the tax collector shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.***

EXHIBIT 4

North Carolina Attorney General Reports — Volume 40
1968-70

25 July 1969

Subject: Public Officers & Employees; Labor Unions; Right of Authority of Municipal to Check-off Labor Union Dues for the Benefit of a Labor Organization Composed of its Employees

Requested by: Mr. H. Milton Short
Councilman of the City of Charlotte

Question: Can a municipal corporation or a city make deductions from the wages of its employees or operate a check-off for union dues of a labor organization or union composed of employees of a municipal corporation?

Conclusion: A municipal corporation or city cannot check-off or deduct union dues from the wages of its employees for the benefit of a labor union or organization composed of its employees.

The inquiry submitted by a councilman of the City of Charlotte is in essence a question of whether or not the City of Charlotte can operate a check-off of union dues for the benefit of a labor organization composed of its employees. It is assumed that this labor organization or union has for its membership city employees for if the city operates a check-off or deduction system it would have to be from the wages of its employees and it certainly would have no authority whatsoever in connection with the labor union whose membership is composed of employees other than city employees.

The assumption is made therefore that such is the case. In the case of *Atkins, et al and International Association of Fire Fighters and International Labor Union v City of Charlotte and the Chief of the Charlotte Fire Department, et al* (Civil No. 2274, Western District of North Carolina, Charlotte Division) a three-judge federal court decided that G.S. 95-97, which prohibited firemen from joining or organizing a labor unit, was void and constituted a deprivation of constitutional rights. As to the constitutional validity of G.S. 95-98 the three-judge federal court had this to say:

"We find nothing unconstitutional in G.S. 95-98. It simply voids contracts between units of government within North Carolina and labor unions and expresses the public policy of North Carolina to be against such collective bargaining contracts. There is nothing in the United States Constitution which entitled one to have a contract with another who does not want it. It is but a step further to hold that the state may lawfully forbid such contracts with its instrumentalities. The solution, if there be one, from the viewpoint of the firemen, is that labor unions may someday persuade state government of the asserted value of collective bargaining agreements, but this is a political matter and does not yield to judicial solution. The right to a collective bargaining agreement, so firmly entrenched in American labor-management relations, rests upon national legislation and not upon the federal Constitution. The State is within the powers reserved to it to refuse to enter into such agreements and so to declare by statute."

The provisions of G.S. 95-98 are as follows:

"Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.—Any agreement, or contract between the governing authority of any city, town, county or other municipality, or between any agency, unit,

or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect."

As you will see this section prohibits and forbids any agreement or contract between your city or municipality and any labor union or trade organization as bargaining agency for any public employees. This would be or amount to an agreement between you and the union and to check-off and pay over to the union the union dues from the wages of these employees of the City of Charlotte. Now, a check-off agreement whereby union dues are deducted from the employees' wages is a function or segment of collective bargaining. In the case of *National Relations Board v Reed and Prince Mfg. Co.*, 205 F.2d 131, 136, the United States Court of Appeals for the First Circuit said:

> "On the check-off proposal, the company registered its opposition, mainly on the ground that this was not a proper subject of collective bargaining. In this the company was mistaken."

Since the check-off agreement deals with a segment or functioning of collective bargaining with the labor union, it is expressly prohibited by G.S. 95-98 quoted above and the City of Charlotte has no authority of law and is expressly prohibited from operating or making any deductions or check-off from its employees' wages for the purposes of paying union dues or for that matter any other fee or assessments that pertain to the business of the labor union or labor organization. The city employees wanted a labor union or labor organization and the three-judge federal court said they could have it but the union will have to see to its own financing without the aid of the city for the city is prohibited by law from entering into any such agreement or exercising such assumed authority even in the absence of an agreement.

Robert Morgan, Attorney General

Ralph Moody,
Deputy Attorney General

EXHIBIT 5

Chapter 118 of the North Carolina General Statutes

Firemen's Relief Fund

Article I

Fund Derived from Fire Insurance Companies

§118-10. ***Fire department to be members of State Firemen's Association.***

*** [i]t is provided that every department enjoying the benefits of this law shall be a member of the North Carolina State Firemen's Association and comply with its constitution and bylaws. ***

Article 2.

State Appropriation

§118-12. ***Application of fund.*** The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widows or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; ***

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed February 22, 1974)

ROBERT A. EARLE, being duly sworn, deposes and says:

That he is a citizen and resident of Mecklenburg County, North Carolina; that he is presently employed by the City of Charlotte as Personnel Director.

That he has reviewed the Memorandum in Support of Plaintiff's Motion for Summary Judgment filed with the Court on February 1, 1974, and specifically Paragraph 2 which states, "That the only persons denied dues check-off or withholding within the last ten years are individual Fire Department employees who requested that dues be checked off for the benefit of Local 660."

That he has reviewed records on file in his office and that he finds the following official requests for check-off have been made and been denied by the City Manager and/or City Council:

October 28, 1968—American Federation of State, County and Municipal Employees/AFL-CIO requested check-off of dues and this request was denied by City Council.

About June 10, 1969—American Federation of State, County and Municipal Employees/AFL-CIO and the Inter-

national Association of Fire Fighters/AFL-CIO requested check-off of dues and were denied.

About July 22, 1969—American Federation of State, County and Municipal Employees/AFL-CIO and the International Association of Fire Fighters/AFL-CIO again requested check-off of dues and were denied.

About January 26, 1970—American Federation of State, County and Municipal Employees/AFL-CIO and the International Association of Fire Fighters/AFL-CIO again requested check-off of dues and were denied.

June 22, 1970—North Carolina Labor Alliance asked for check-off and was denied.

February 1, 1971—Retail, Wholesale and Department Store Union asked for check-off and was denied.

February 1972—International Association of Fire Fighters/AFL-CIO asked for check-off of dues and was denied.

February 1973—International Association of Fire Fighters/AFL-CIO asked for check-off of dues and was denied.

Jaunary 1974—North Carolina State Firemen's Association requested assessment of $3.00 yearly dues check-off and was denied.

That as part of his duties as Personnel Director for the City of Charlotte he has been responsible for reviewing requests for the withholding of employees' pay for membership in unions and other employee organizations. That withholding employees' pay is considered to be a fringe benefit for employees and each request must be considered to determine whether or not all employees of the City of Charlotte would be benefited by the withholding, and whether or not such a benefit would outweigh the considerable administrative burden which would be imposed on the City. That whether or not

a specific withholding of pay is allowed is a matter for the Charlotte City Council. That in addition to the specific official requests for withholding and enumerated above, there have been numerous commercial organizations (i.e. insurance firms, etc.) concerning the possibility of having employees' pay withheld.

That there would be great and substantial administrative burden and responsibility imposed upon the City of Charlotte if the withholding of employees' pay should be allowed for any and every reason and without restriction.

This the 22nd day of February, 1974.

s/Robert A. Earle

ROBERT A. EARLE, Affiant

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed February 28, 1974)

D. F. BLACK, being duly sworn, deposes and says:

1. That he is a plaintiff in this action, a fire fighter engineer in the Charlotte Fire Department, and secretary of Local 660, International Association of Fire Fighters.

2. That on February 6, 1974 he telephoned the office of Assistant Chief Dowdy of the Fire Department and was told by Chief Dowdy's secretary that the Charlotte Fire Department, at that time, had a work force of 543 uniformed men.

3. That on February 4, 1974 he checked the membership list of Local 660 and determined that on that date there were 351 dues paying members of Local 660.

D. F. Black

D. F. BLACK

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

MOTION TO DISMISS

(Filed June 26, 1974)

NOW COME defendants, through their attorney W. A. Watts, and respectfully move the Court to dismiss this action purusant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, because the Court lacks jurisdiction over the subject matter.

These defendants request that this matter be advanced upon the docket and a speedy hearing held thereon.

Respectfully submitted this 26th day of June, 1974.

W. A. Watts

W. A. WATTS, Attorney for Defendants
600 East Trade Street
Charlotte, North Carolina 28202
(704) 374-2254

(Certificate of service omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

MOTION TO AMEND THE COMPLAINT

(Filed July 3, 1974)

Plaintiffs, pursuant to Rule 15, Federal Rules of Civil Procedure and 28 United States Code, Section 1653, hereby move the Court to amend Paragraph I of the Complaint heretofore filed in this action on October 2, 1973, to read as follows:

(a) Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331 and 1343, this being a suit in equity authorized by law, Title 42, United States Code, Section1983,to be commenced by an citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a State of rights, privileges and immunities secured by the Constitution and laws of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the First and Ninth Amendments and by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. The amount in controversy exceeds $10,000.00 exclusive of interest and costs, in that the actions of the defendants have limited the plaintiffs, and each of them, in the exercise of constitutional rights thus limiting benefits which would accrue from the free exercise of said rights.

(b) Jurisdiction is further invoked under Title 28, United States Code, Sections 2201 and 2202, this being a suit for a declaratory judgment, declaring the unconstitutionality of the pattern and practice of the defendants in refusing to withhold or "check-off" union dues on behalf of Local 660, International Association of Fire Fighters.

This the 2nd day of July, 1974.

Respectfully submitted,

Jonathan Wallas

JOHNATHAN WALLAS
JULIUS LEVONNE CHAMBERS
Chambers, Stein, Ferguson & Lanning
951 S. Independence Boulevard
Charlotte, North Carolina 28202

(Certificate of service omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed July 8, 1974)

ROBERT A. EARLE, being duly sworn, deposes and says:

That he is a citizen and resident of Mecklenburg County, North Carolina; that he is presently employed by the City of Charlotte as Personnel Director.

That he is custodian of those records pertaining to the withholding of Charlotte city employees' pay; that he has searched his records and found that there has been no withholding of employees' pay and no payment turned over to any labor-type organization of employees' pay during the past 10 years.

That in order to withhold pay from Charlotte municipal employees for the benefit of a labor organization, it would be necessary for the Charlotte City Council to accord this right.

s/Robert A. Earle

ROBERT A. EARLE

(Jurat omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed July 25, 1974)

R. L. MIDDLETON, being duly sworn, deposes and says:

1. That he is a plaintiff in this action, a member of the Charlotte Fire Department, and President of Local 660, International Association of Fire Fighters.

2. That the current dues paid by members of Local 660 to said Union is $4.00 per month.

3. That if individual Fire Department members are allowed to have monies withheld from their paychecks and paid directly to Local 660, then he, as well as the other members of Local 660, will be able to engage in the following associational activities for their common betterment and for the betterment of the Charlotte community:

(a) The undersigned and other members of Local 660 will be able to purchase life insurance, health insurance, major medical insurance and other insurance which potentially may bring benefits to each of them and their families in excess of $10,000.00.

(b) The undersigned and other members of Local 660 will be able to join together to hire legal counsel for the bene-

fit of the Union and for the benefit of each of them individually.

(c) The undersigned and other members of Local 660 will be able to engage in various community service activities which will bring substantial benefit to the Charlotte community as well as to each of them individually.

(d) The undersigned and other members of Local 660 will be able to join together in numerous other associational activities which, by their nature and purpose, will provide substantial benefits, monetary and otherwise, for each of the members of Local 660.

(e) Local 660 will be able to pay a salary to its officers; thereby providing monetary benefits for paid officers while at the same time, increasing the effectiveness and value of the Union's associational activities.

s/R. L. Middleton

R. L. MIDDLETON

(Jurat omitted in printing)

IN THE

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed August 1, 1974)

DAVID A. BURKHALTER, being duly sworn, deposes and says:

That he is the City Manager for the City of Charlotte, and that he has been City Manager since May 10, 1971.

That as the City Manager, he is the chief administrative officer for the City. That it is one of the duties of the City Manager to carry out the policies of the City Council and be familiar with these policies both those which are written and those which are unwritten.

That he has knowledge of and is familiar with the Charlotte City Council's policy with respect to withholding of pay from employees' weekly paychecks. That he knows that it is the policy of the City Council to have withheld from employees' paychecks those withholdings which the law requires and are listed as follows:

1. Withholding for Federal Income Tax.
2. Withholding for State Income Tax.
3. Withholding for City/County tax levies.

4. Withholding for the North Carolina Firemen's Retirement System.

5. Withholding for the local government retirement system.

That in addition to those withholdings which are authorized and required by the laws of the Federal Government and the State of North Carolina, he knows that it is the policy of the Charlotte City Council to permit and authorize those deductions which would directly benefit all City employees, but that it is contrary to the policies of the Charlotte City Council to permit deductions which would benefit only some special group of employees.

That those deductions which benefit employees generally, which are in effect fringe benefits for employees, and in which the City participates and are authorized by the Charlotte City Council, are as follows:

1. Hospital and medical insurance.

The City has established and participates in a medical insurance plan for employees with Life of Virginia.

2. Group life insurance.

The City has established and participates in a plan for its employees with Life of Virginia; also a firemen's benefit fund with Lincoln National Life.

3. Savings plans, where a portion of the employee's pay is withheld for him at his request, and a deposit is made to the employee's account with the named credit union.

a. U. S. Savings Bonds (purchase of bonds is made for the employee).

b. All credit unions of which City employees are members.

c. AEtna Deferred Compensation Program.

4. Certain specific charities which are authorized by the City Council.

a. United Way.

b. Charlotte Fire Department Volunteer Pledge Fund.

That he knows it is the policy of the City Council to restrict withholdings from employees' pay to those classes described above because:

1. There would be a very substantial administrative burden to permit the withholding or deductions from employees' pay for any and all purposes; particularly if the City should be required to make deductions at the request of individual employees or groups of employees.

2. There would be a substantial expense to the City if employees could require the City to deduct and withhold from employees' pay any and all of the innumerable purposes which might arise.

That several requests have been made by other organizations and groups during the past 10 years, and these requests for withholding have been found to lack conformity with guidelines as set forth above, and these requests have been denied.

That the City has never held itself out to its employees as providing withholding of pay indiscriminately as a service to its employees.

This the 1st day of August, 1974.

s/David A. Burkhalter

DAVID A. BURKHALTER, Affiant

(Jurat and certificate of service omitted in printing)

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

C-C-73-236

Filed: Sept. 5, 1974

LOCAL 660, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, et al.,
Plaintiffs,

-vs-

THE CITY OF CHARLOTTE, et al.,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

(Printed at A-7 of the Petition for Writ of Certiorari)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73

(Filed September 12, 1974)

Notice is hereby given that the City of Charlotte, the Charlotte City Council, Fred Alexander, James Whittington, Milton Short, Joe Withrow, Pat Locke, Kenneth R. Harris, and Neil C. Williams, defendants above named, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the final order entered in this action on September 5, 1974.

Office of the City Attorney

By: Henry W. Underhill, Jr.

HENRY W. UNDERHILL, JR.
Attorneys for Appellants
600 East Trade Street
Charlotte, N. C. 28202
704-374-2254

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed December 23, 1974)

ALLEN DUNCIL, being duly sworn, deposes and says:

1. About eighteen months ago, I contacted Robert Middleton, President of Local 660, IAFF, concerning the establishment of a group insurance plan for Local 660.

At that time, I was a representative for the Jefferson Standard Life Insurance Company in Charlotte, North Carolina. Since that time, I have severed my ties with Jefferson Standard so that I may represent several different companies simultaneously as opposed to just one. Early in 1974, I established my own firm in order to accomplish this end. My firm represents Manhattan Life Insurance Company of New York, New York, First Colony Life Insurance Company of Lynchburg, Virginia, Provident Life and Accident Company of Chattanooga, Tennessee, Georgia International Life Insurance Company of Atlanta, Georgia, and Continental Assurance Company of Chicago, Illinois. The name of my firm is Duncil and Company.

2. Since I first spoke with Mr. Middleton we have discussed the possibility of establishing a group life insurance

plan on several occasions. During this entire period of time, we have not been able to establish such a plan for the Professional Fire Fighters because they have no suitable way to collect the premium from their members. All companies including the above require a central billing point to collect the premium from the participants and mail one check to the insurance company in order to qualify for group insurance. In the case of Local 660, the central billing point for union members would most likely have to be the union itself.

3. Without the establishment of an acceptable central billing system, the only system which could be set up at the present time for the Professional Fire Fighters in Charlotte is a system of individual policies which would cost each member more money than the same coverage under group insurance, and under this type of system, each member would have to be individually underwritten which would cause many members who are older or who have health problems to not be able to receive such insurance.

4. Under the circumstances existing with Local 660 and its members, the only feasible method of establishing an acceptable central billing system would be through dues "check-off." If the members of Local 660 are allowed a "dues check-off" system, we will proceed to establish a group life insurance plan for its members which will probably be underwritten by Manhattan Life Insurance Company if they concur as they wrote one of the first group life insurance plans in the United States over 100 years ago and have the most favorable benefits and rates.

5. At the time I was representing Jefferson Standard Life Insurance Company, I could have written a group insurance plan for the members of Local 660 with Pilot Life Insurance Company, a subsidiary of the Jefferson-Pilot Corporation.

I made no formal proposal to Local 660 because I knew such a proposal would not be approved without dues check-off.

s/Allen Duncil

ALLEN DUNCIL

This the 19th day of December, 1974.

(Jurat omitted in printing)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

(Title omitted in printing)

AFFIDAVIT

(Filed December 23, 1974)

R. L. MIDDLETON, being duly sworn, deposes and says:

1. I am a plaintiff in this action and the President of Local 660.

2. About eighteen months ago I was contacted by Allen Duncil, an insurance agent. At that time I understood Mr. Duncil represented Jefferson Standard Life Insurance Company and Duncil gave to me his business card, a copy of which is attached hereto and incorporated herein as Exhibit A. Mr. Duncil and I, as well as other members of Local 660, have subsequently discussed obtaining a group life insurance program for members of Local 660 on several occasions. During these discussions, I was under the impression Mr. Duncil was still a representative for Jefferson Standard Life Insurance Company.

3. In reviewing the possibility of establishing a group life insurance plan with Mr. Duncil, we concluded the only feasible method by which the members of Local 660 could obtain insurance at favorable rates was if the unions' members were granted dues check-off.

4. It has always been understood by me that if the members of Local 660 could obtain dues check-off, Mr. Duncil would be willing to obtain a group policy for union members. I assumed Mr. Duncil represented Jefferson Standard Life

Insurance Company because of the business card (Exhibit A) given to me by him.

5. During the past two or three years I have spoken to representatives of Vulcan Life Insurance Company, whose names I do not remember, about a group life insurance program for members of Local 660. We discussed at that time payment of premiums through deductions through credit unions and through dues check-off. It was my opinion and understanding from discussions with the Vulcan representatives that the only manner in which Vulcan could feasibly write a group policy for Local 660's members was if a dues check-off system was obtained by the members of Local 660.

6. It is still my understanding that if the members of Local 660 can obtain dues check-off we will be able to obtain a group life insurance policy from one of the firms Allen Duncil represents or from some other firm. It is my further understanding that there is no feasible manner other than a dues check-off system by which the members of Local 660 will be able to obtain group life insurance at favorable rates.

7. I have not misrepresented the facts in affidavits I have filed in this case. I have assumed Allen Duncil represented Jefferson Standard Life Insurance Company and that he was planning to write group insurance with that Company. It now appears that Mr. Duncil could have obtained a group insurance policy from a subsidiary of Jefferson Standard if the members of Local 660 had obtained a dues check-off system from the defendants.

R. L. Middleton

R. L. MIDDLETON

This the 20th day of December, 1974.

(Jurat omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 74-2240

No. 74-2241

No. 75-1126

LOCAL 660, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, et al.,

Plaintiffs-Appellees

vs.

CITY OF CHARLOTTE, et al.,

Defendants-Appellants

(Opinion printed at A-3 of the Petition for Writ of Certiorari)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 74-2240

Local 660, International Association of Firefighters, an unincorporated labor organization, et al.,

Appellees,

versus

City of Charlotte, a municipal corporation, the Charlotte City Council, the governing legislative body of the City of Charlotte, et al.,

Appellants.

(Order for Stay printed at A-1 of the Petition for Writ of Certiorari)